

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2017

Public Authority: Judicial Appointments and Conduct Ombudsman
Address: 9th Floor, The Tower
102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Judicial Appointments and Conduct Ombudsman (JACO) about a reference, in his Annual Report for 2015-16, of instances where a complainant had not received correspondence from an Advisory Committee. JACO refused the request relying on the section 14(1) FOIA (Vexatious requests) exemption.
2. Following her investigation, the Commissioner decided that the request was vexatious and that JACO was entitled to rely on section 14(1) FOIA to refuse it. She further decided that, in delaying the issue of a refusal notice beyond the 20 working days statutory maximum time allowed, JACO had breached section 10(1) FOIA (Time for compliance with request).
3. The Commissioner does not require JACO to take any steps to ensure compliance with the legislation.

Request and response

4. On 29 October 2016 the complainant made the following request for information from JACO under the FOIA:

It is known that in 2015/16 at least two cases escalated to the Judicial Ombudsman, initially dealt with by a Magistrates' Advisory Committee, involved complaints stating that they had not received the Advisory Committee's letter dismissing the complaint.

See Case Study five – Magistrates' Advisory Committee (Page 30 of the Annual Report 2015-16)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537887/judicial-appointments-and-conduct-ombudsman-annual-report-2015-16.pdf

"The Ombudsman understood that the complainant did not receive the AC's letter dismissing his complaint, but he was content that the AC responded to the complainant's query about progress, confirming that the matter had been dismissed and apologising that the letter had failed to reach him."

Please see the following quoted from the Judicial Conduct Ombudsman's Preliminary Investigation Report (23 May 2016)

<https://www.scribd.com/doc/313585675/Provisional-Conduct-Ombudsman-JACO-Report-23-May-16-Redact>

"The fact that three letters did not reach you is surprising as they were properly addressed except for a minor error in the postcode which should not have prevented delivery. I do not consider that a finding of maladministration is possible for this error."

I would like disclosing;

1) which Advisory Committee was referred to in the case study (Page 30 of the Annual Report 2015-16) and;

2) any other instances where the complainant stated similarly that they had not received correspondence from the Advisory Committee (and which one(s))

5. JACO responded on 1 December 2016 saying that the request was vexatious and refusing it, relying on the section 14(1) FOIA exemption. The decision was confirmed at internal review and subsequently in the JACO Ombudsman's letter to the complainant of 30 January 2017.

Scope of the case

6. On 17 February 2017 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He said that JACO had applied section 14(1) FOIA wrongly to avoid the embarrassment that disclosure would cause to the secretary of a named Advisory Committee (AC).
7. The Commissioner reviewed the application by JACO of section 14(1) FOIA. She considered detailed representations from the parties and has noted the section of the JACO Annual Report for 2015-16 which gave rise to the complainant's concern.

Reasons for decision

Section 14 - vexatious or repeated requests

8. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request that is vexatious. Consistent with an Upper Tribunal decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether or not a request is vexatious, the Commissioner's guidance for section 14(1)¹ confirms that the key question to ask when weighing up whether or not a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
9. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities should take into account wider factors such as the background, context and history of the request.
10. The Commissioner's guidance makes clear that section 14(1) FOIA can only be applied to the request itself, and not to the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified as vexatious previous requests from the same individual.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

11. In reaching her decision in this case, the Commissioner has considered the arguments put forward by both the complainant and JACO, as well as the context in which the request was made.

The complainant's view

12. The complainant said that JACO had relied on the section 14(1) FOIA exemption to avoid embarrassing the secretary of a named AC. The complainant, who by that point had already corresponded in some detail with JACO on connected matters, said that he had not received ten letters which a named court said it had sent to him. He questioned whether his request would genuinely have imposed a burden on JACO and said that the real burden was on taxpayers as, in his eyes, the true function of JACO was to protect judicial office holders who have had allegations of misconduct levelled against them. He believed that complainants routinely spent time and effort presenting relevant material in the expectation that their concerns would be properly addressed when in fact there was no chance whatsoever of that happening; he said this amounted to fraud by misrepresentation by JACO.
13. The complainant said that JACO simply did not want to disclose the information as doing so might raise questions about the honesty of the Courts' staff. He said he had no illusion that there was a possibility of JACO altering its decision concerning his earlier matters with JACO or that a different outcome could be achieved once an Ombudsman had made up his mind. He added that the "establishment Vs the public" mentality of JACO was all too obvious.
14. The complainant added that JACO had noted his requests to other public authorities including the Ministry of Justice (MOJ) and HM Courts and Tribunals Service (HMCTS) and a named local council. He said that JACO was misusing public money by monitoring activity over which it had no jurisdiction and, in the case of MOJ and HMCTS, there was a suggestion that JACO was not independent from government. JACO's comments on the request being a burden on public funding were, he said, disingenuous.
15. The complainant said that it was a fundamental error to assume that his motives were to obtain new evidence that might change JACO's decision on the complainant's previous JACO matters; his reason for asking for the information was as far from being vexatious as it could possibly be.
16. In further more recent evidence to the Commissioner, the complainant added that the focus in considering his complaint should be on determining whether or not he had submitted the request solely to cause annoyance or if he perceived there to have been a serious

purpose behind it. He said that the production of evidence to support his allegations was of secondary importance, what mattered was his belief that dishonesty has been involved. He said he believed that a set of letters, which he says went undelivered, had never being posted but had been produced afterwards by officials.

JACO's view

17. JACO said that the genesis of the complaint was the complainant's dissatisfaction at the disposal of a summons for the non-payment of council tax in November 2012, especially the costs that had been awarded against him. The complainant had subsequently applied to judicially review the local authority bringing the case. The root cause of the complaint was that the complainant was seeking to challenge a judicial decision by some means other than through the courts. However, JACO said it could not comment on any issues raised in a court case.
18. JACO added that the complainant had complained to the relevant AC about the conduct of the magistrates who had decided his case. His complaint was dismissed on the basis that he was complaining about a judicial decision which did not raise questions of misconduct and a letter of dismissal had been sent. However, the complainant had said that he did not receive the dismissal letter even after it had been re-sent. JACO noted that there had been a minor (one digit) error in typing the postcode for the address in three out of ten letters the complainant claims not to have received. The matter had been referred for a full preliminary investigation by JACO which, after careful consideration, had concluded that the minor error in typing the postcode did not amount to maladministration.
19. Subsequently the complainant had seen in the JACO Annual Report 2015-16 a reference to another litigant's matter. That litigant too had apparently not received correspondence from an AC dismissing his complaint. This report had given rise to the complainant's information request to JACO.
20. JACO indicated that it had become aware that the MOJ and a range of other public authorities had received multiple information requests from the complainant all stemming from his council tax matter. Many of these requests had been made via the public "What Do They Know" website using accounts in both the complainant's own name and that of at least one alias. These accounts had subsequently been suspended by the service operator by reason of the conduct of the complainant in his use of them.

21. JACO said that it believed there was no significant wider public interest in disclosing the information requested. It believed that the complainant had sought the information to prolong correspondence in respect of a matter which had been considered in full by the JACO Ombudsman, and had been concluded. The request therefore lacked serious purpose or legitimate motivation. The complainant's previous behaviour, as demonstrated by his "What Do They Know" accounts, suggested that he would attempt to pursue with the relevant AC, and possibly JACO and other public authorities, matters that had properly been closed after appropriate investigation. Going forward, this would impose a wider burden on JACO and on other public authorities. JACO said that previous decisions by the Commissioner in other connected matters demonstrated that the complainant had established a pattern of abusing his right of access to information in ways that imposed a disproportionate burden on the public authorities affected.
22. JACO confirmed to the Commissioner that, as a result of the Ombudsman's earlier investigations on behalf of this complainant, there was no prospect of his finding maladministration. The Ombudsman had decided that the relevant dismissal letters had been sent, he had noted a minor error in the address in three instances and the AC had properly dismissed the complaint in accordance with the disciplinary legislation and guidance. This effectively meant that, in the absence of an application for Judicial Review, an application for which had been launched but then withdrawn, there could be no prospect that the complainant's concerns about the Magistrates would be reconsidered or that the Ombudsman would require the AC to reconsider the complainant's concerns. JACO understood that the complainant had taken steps to pursue a legal remedy before submitting a complaint and had an understanding of the process for challenging matters through the Courts. The complainant was therefore using the FOIA regime to prolong a matter that had been closed.
23. JACO told the Commissioner that it had received specialist advice from the MOJ on the application of the FOIA exemptions and had taken this advice into account in arriving at its decision. It was aware in general terms of other connected matters raised with MOJ. However, the decision to treat this request as vexatious had been taken by the Ombudsman personally and independently of MOJ; he was solely responsible for it. He is not part of MOJ; his is an independent role to which he has been appointed by HM the Queen.
24. JACO confirmed to the Commissioner that it had also considered whether the information request might be raising a matter of wider public interest but decided that it did not. In reaching that conclusion JACO had taken account of the full context, including the volume of connected requests by the complainant and his alias. In making the

request, the complainant was seeking to pursue and prolong discussion of matters that were closed rather than exploring an issue that might point to a systemic failing that could be capable of being of wider public value.

25. JACO said that the intemperate terms of the complainant's criticisms, including alleging dishonesty on the part of the staff of JACO, were not in themselves sufficient to cause him to conclude that the request was vexatious but they were a factor supporting that conclusion.

The Commissioner's decision

26. The Commissioner noted that the complainant has been liberal in his criticisms of, and accusations of dishonesty and malicious intent by, JACO and other public authority officials and members of the Courts. The complainant has suggested that court staff have falsely produced dismissal and other letters after the event. During her investigation, the Commissioner saw no evidence to support this assertion and is satisfied, on a balance of probabilities, that these accusations have no foundation in fact.
27. The complainant queried the independence of the JACO Ombudsman from government. The Commissioner has seen no evidence to support this view, and has seen contrary evidence from JACO that the Ombudsman is fully independent of government and has taken an independent view of this matter.
28. JACO and the Commissioner have noted the numerous other FOI matters put to other public authorities and placed in the public domain by the complainant, both in his own name and using an alias. She considered that this was part of the wider background, context and history of the matter and part of a well-established pattern of conduct by the complainant.
29. The Commissioner has considered whether there was a serious purpose behind the request and decided that there was not. She considers that the request is an attempt to use the FOIA regime to reopen and prolong correspondence in respect of matters that have been properly concluded by the JACO Ombudsman personally and considers that this is an abuse of FOIA.
30. Taking all the above into account, the Commissioner's decision is that the request is vexatious and that JACO is entitled to rely on section 14(1) FOIA to refuse it.

Section 10 – time for compliance

31. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) FOIA requires that, if the requested information is held by the public authority, it must be disclosed to the complainant unless a valid refusal notice has been issued.
32. Section 10(1) FOIA requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
33. The Commissioner saw that the complainant's initial request was dated 29 October 2016 and a response was not sent until 1 December 2016. This was in breach of section 10(1) FOIA.

Other matters

34. The complainant's request for an internal review was received by JACO on 5 December 2016 but the response was not sent until 30 January 2017. The elapsed time was therefore well in excess of the 20 working days recommended by the Commissioner as a reasonable time in which to conduct most reviews, although it did not exceed the 40 working days that she considers to be the maximum delay that would be reasonable. The delay has been noted by her as part of her work in monitoring the performance of JACO and other public authorities.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF